

**James Dunn**  
**February 23, 2018**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS - WESTERN DIVISION

C.A.No.: 3:17cv30031

JANETTE HERNANDEZ PAGAN, PPA  
F.H., a minor,  
PLAINTIFF

VS.

CITY OF HOLYOKE, A MUNICIPAL CORPORATION,  
OFFICER THOMAS J. LEAHY, OFFICER JAMES  
DUNN, OFFICER JABET LOPEZ  
DEFENDANTS

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DEPOSITION OF: JAMES DUNN  
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Taken before Roxanne C. Costigan,  
Certified Merit Reporter, Notary Public, pursuant to  
Rule 30 of the Federal Rules of Civil Procedure, at  
the law offices of ACCURATE COURT REPORTING, INC.,  
1500 Main Street, Suite 222, Springfield, MA, on  
February 23, 2018.

Roxanne C. Costigan  
Certified Merit Reporter

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1 Q. When you did un-ah, just for the record,  
2 that meant a no?

3 A. No.

4 Q. Thank you. Did you hear over the radio  
5 that there was a report of fired shots that evening?

6 A. Yes, I did.

7 Q. Do you remember -- that's not something  
8 that happens every single night at Holyoke, is it?

9 A. Not every night.

10 Q. So, do you recall what part of the city  
11 you were in when you received that call?

12 A. Yes. I was on Southampton Road.

13 Q. Back in the day in '14, what area of the  
14 city were you responsible for patrolling?

15 A. I was car 6. So, that would be car 6's  
16 area which is mostly the Churchill neighborhood.

17 Q. And not being a Holyoke native, where is  
18 the Churchill neighborhood in relation to the Holyoke  
19 bridge?

20 A. It would be kind of in the middle of the  
21 city. It's not far. Holyoke's not a big town.

22 Q. Were you the first officer to arrive at  
23 the scene?

24 A. No.



1 better. It just adds light to a situation.

2 Q. Right. And, so, are you to the left of  
3 Mr. Leahy or to the right of Mr. Leahy?

4 A. I am to his right.

5 Q. How many feet away are you from him?

6 A. A few feet.

7 Q. Are you also holding your gun at the  
8 ready position?

9 A. Yes.

10 Q. Tell me what you see. What observations  
11 do you make of this child?

12 A. I see Felix like squatting, crouching  
13 down on the ground, even though we're screaming and  
14 yelling at him to get down on ground, he is not  
15 obeying our commands.

16 Q. Okay. Is he running away at this point?

17 A. No. I just said he was crouching down.

18 Q. But is he turning around?

19 A. He was crouching down.

20 Q. Is he talking to you?

21 A. I don't think so.

22 Q. Did he say any words to you as you  
23 pointed your gun?

24 A. I don't recall him saying any words.



1 Q. Did he say anything that, as you got  
2 there, anything that -- was he able to verbalize  
3 anything that you heard that he said to Officer Leahy?

4 MR. JOYCE: Objection.

5 THE WITNESS: I don't remember  
6 hearing him say anything.

7 Q. (By Mr. Pineiro) Okay. Tell me, as you  
8 got there with your gun drawn, tell me every order and  
9 command that you heard Officer Leahy say to Felix.

10 A. I heard him yelling at him as loud as he  
11 could to get down on the ground.

12 Q. Tell me exactly tell me what you heard  
13 him say.

14 A. Get down, get down on the ground, get  
15 down, get down.

16 Q. Did he say just like that or did he say,  
17 Get down on the fucking ground, or anything like that?

18 A. I don't recall.

19 Q. All right. How many times would you say  
20 he said it?

21 A. Numerous times.

22 Q. This must have startled this young kid?

23 MR. JOYCE: Objection.

24 MR. EMMA: Objection.

1 Q. So, if he raised his hands, that occurred  
2 before your time?

3 MR. EMMA: Objection.

4 THE WITNESS: I never saw it.

5 Q. (By Mr. Pineiro) You never saw that.  
6 Did Officer Leahy tell you that at first, he raised  
7 his hands?

8 A. No.

9 Q. What did he tell you that happened before  
10 before you got there?

11 A. I don't think we discussed about what  
12 happened before he got there.

13 Q. He didn't. He never told you what he did  
14 what his reactions were before he got there?

15 A. We were in the middle of someone who was  
16 not following our commands. We had just had four  
17 people get shot at. We had already taken a gun from  
18 the scene. This was a very, very serious call. This  
19 is about the most serious thing a Police Officer can  
20 deal with.

21 Q. Yeah.

22 A. We weren't about to have a discussion  
23 about what happened before we got there.

24 Q. No, but eventually --



1           A.       We were dealing with the threat at hand.  
2       That's what we were doing.

3           Q.       But eventually, you had a discussion with  
4       him, when things calmed down? What I'm trying to get  
5       from you is, what did he tell you?

6           A.       I don't recall.

7           Q.       You forgot?

8           A.       I don't know what he told me about what  
9       happened before.

10          Q.       He must have told you things, right?

11          A.       I don't know.

12          Q.       All right. So, when you get there, only  
13       because we don't have a camera here that tells us what  
14       to do, was he standing up when you first saw him?

15          A.       He was --

16                   MR. JOYCE: Objection.

17                   THE WITNESS: -- crouching down.

18          Q.       (By Mr. Pineiro) Crouching down. Can  
19       you stand up and show us the first position you saw  
20       him?

21          A.       You would like to see me crouch down?

22          Q.       Yes. Like, the first time you saw him,  
23       tell me what he was doing with his body.

24          A.       This is what he was doing.

1 Q. So, you're kneeling -- you're kneeling,  
2 you're crouching down?

3 A. I'm crouching.

4 Q. And you have your hands up?

5 A. Like this.

6 Q. So, when you saw that, did that suggest  
7 to you that -- did you understand at that point that  
8 you were dealing with a kid or did you think --

9 A. No.

10 Q. -- he was much older?

11 A. I'm dealing with someone who could kill  
12 me. That's who I was dealing with.

13 MR. JOYCE: Objection.

14 Q. (By Mr. Pineiro) So, you didn't know you  
15 were dealing with a kid?

16 A. No.

17 Q. Now, you thought you were dealing with a  
18 large person?

19 A. No.

20 MR. JOYCE: Objection.

21 Q. (By Mr. Pineiro) No. Okay. So, did the  
22 fact that -- and because his hands were up, you didn't  
23 see anything in his hands?

24 A. I didn't see anything in his hands.



1 Q. How many times did you strike Felix?

2 A. Several times.

3 Q. How do you -- in 2000 -- has the way in  
4 which you report the use of force changed between '14  
5 and today?

6 A. I don't know.

7 Q. When you struck him, did you strike him  
8 with -- how did you strike him? Did you strike him  
9 with a closed fist?

10 A. Closed fist.

11 Q. Closed fist. Not a palm heel strike?

12 A. No.

13 Q. How many times would you say you struck  
14 him?

15 A. Several times.

16 Q. More than three?

17 A. I don't know. Several times.

18 Q. You lost track of how many times you  
19 struck him?

20 A. No. I wrote in my report it was several  
21 times. That's my best guess.

22 Q. So, several is more than one but could be  
23 three or four?

24 A. Sure.

1 Q. Under what circumstances can you deliver  
2 head strikes in the use of force policy that the  
3 department uses?

4 A. Under normal circumstances.

5 Q. Yeah?

6 A. If someone is assaultive, but this was  
7 not a normal circumstance.

8 Q. Okay. This was a person that wasn't  
9 pointing a weapon at you?

10 A. No.

11 Q. This was not a person that was running  
12 away from you?

13 A. No.

14 Q. Is it your testimony that you tackled  
15 Felix?

16 A. Yes.

17 Q. Did you punch him first or did you tackle  
18 him first?

19 A. No. I tackled him first.

20 Q. So, you ran thirty -- when you tackled  
21 him, where was he in relation to the ground? Was he  
22 still crouching down?

23 A. I believe so.

24 Q. Hands open?



1 approach him in a tactical manner until he got on the  
2 ground?

3 A. Because Officer Leahy still had his gun  
4 up.

5 Q. And did Officer Leahy walk towards closer  
6 to him --

7 A. I don't know.

8 Q. -- or did he remain on the same spot?

9 A. I'm not sure. I was busy running.

10 Q. You definitely put your gun down, meaning  
11 you put it in your holster?

12 A. I definitely put it in my holster.

13 Q. What kind of holster do you carry for  
14 your firearm?

15 A. Safariland 6204.

16 Q. Okay. They're nice.

17 A. It's a nice holster.

18 Q. It's a nice holster, absolutely.

19 So, you're not sure if you pushed or if  
20 you just tackled? Did you roll over on the ground?

21 A. I don't recall.

22 Q. How do you recall landing on the ground  
23 then?

24 A. I remember hitting him as hard as I

1     could.   That's what I remember.   And then --

2           Q.       Did you kick him?

3           A.       -- after he was ground --

4           Q.       Did you kick him?

5           A.       No.

6           Q.       And then after he was on the ground?

7           A.       Officer -- I remember Officer Leahy and I  
8 struggling to his hands out from underneath him.

9           Q.       Where is he in relation to Water Street?  
10 Is he closer to the canal or closer to the building?

11          A.       I don't know.

12          Q.       If we showed you a picture, would you be  
13 able to say?

14          A.       He was in the middle of the street to my  
15 best recollection.

16          Q.       All right.   Where was his head looking,  
17 towards the canal or in any other direction?

18          A.       I have no idea.

19          Q.       So, when did you put your gun -- when did  
20 you re-holster your gun, before you started running?

21          A.       Before I started running, I told Officer  
22 Leahy I was going in so he wouldn't shoot me, because  
23 startle reflex is a real thing, and then I went in.

24          Q.       Okay.   When you hit -- was he still



1 crouched when you hit him as hard as you could?

2 A. I believe so.

3 Q. And 250 pounds full throttle and he  
4 remained conscious when you hit him?

5 A. Absolutely. He fought with us  
6 afterwards. He struggled with us.

7 Q. How did he fight with you?

8 A. He pulled his hands underneath his body  
9 to his waist which is unfortunately the place where a  
10 lot of people keep firearms and weapons in their  
11 pockets and in their waistband. So, that's why we  
12 continued to struggle with him.

13 Q. So, when you punched him, that's when he  
14 got to the ground?

15 A. Correct.

16 Q. And that's when you think you punched him  
17 as hard as you could in the head?

18 A. Yes.

19 Q. Although you're not sure how many times  
20 all, together at least two?

21 A. At least two.

22 Q. Where in the head did you hit?

23 A. I'm not sure.

24 Q. And he didn't pass out while you were

1 punching him in the head?

2 A. He struggled with us the whole time.

3 Q. Okay.

4 A. He's a steep struggler. He was fighting  
5 with us the whole time.

6 Q. And is he saying anything as he is  
7 struggling with you?

8 A. I don't remember.

9 Q. Why wouldn't you remember something like  
10 that?

11 A. I was focused on getting his hands under  
12 control so he couldn't pull a weapon out and shoot me  
13 or stab me. I was focused on my safety, Officer  
14 Leahy's safety and the people around us.

15 Q. I haven't asked you, what's Leahy doing  
16 to him at this point in time? Is he punching him too?

17 A. I don't know.

18 Q. Is he delivering knee strikes?

19 A. I have no idea. I was focused on my job.

20 Q. Got you. How did he get the injuries to  
21 his face? Have you seen photos of him?

22 A. I have.

23 Q. How did he get those injuries?

24 A. I would say from fighting with the



1 police.

2 Q. Fighting with the police? Okay. How  
3 long did you fight on the ground?

4 A. A minute or two.

5 Q. So, you tackled him, you punch him a  
6 couple of times in the head. Now, when is it that  
7 Jabet Lopez comes in, because he also gets involved,  
8 this is three on one?

9 A. I don't remember Jabet being there until  
10 afterwards. I know by reading his report that he was  
11 there, but I don't see him. I focus on myself and  
12 trying to get his hands. My main goal was to get his  
13 hands in handcuffs so he couldn't hurt us.

14 Q. Did Jabet him hit on the head with a  
15 baton?

16 A. I never saw that.

17 Q. You know he has this thing that looks  
18 just like an impression of a baton strike to the head?

19 MR. EMMA: Objection.

20 Q. (By Mr. Pineiro) Have you seen that  
21 photograph?

22 A. No.

23 Q. Did Jabet tell you -- so, you never saw  
24 Jabet with the baton in his hand?